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No. 94-1258

In The

Supreme Court of the United States

October
Term, 1994

NATIONAL POSTAL MAIL HANDLERS UNION,
A DIVISION OF
LABORERS INTERNATIONAL UNION
OF NORTH AMERICA, AFL/CIO,
d/b/a/ MAIL HANDLERS BENEFIT PLAN,
Petitioner

v.

MARILYN GOEPEL and RONALD GOEPEL,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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February 24, 1995

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QUESTION PRESENTED

Whether a well pleaded complaint for breach of contract and other state law claims between two private parties, an insured and her carrier, is removable to federal court by the carrier under 28 U.S.C. § 1441 (B) as a "claim ... arising under the ... of the United States" because the contract was approved for sale to federal employees by the Office of Personnel Management ["OPM"] under the authority of the Federal Employees Health Benefits Act, 5 U.S.C. §8901, *et seq.* ["FEHBA"] and regulations pursuant thereto, which law and regulations permit but do not require review by OPM of benefit denials [5 C.F.R. 890.105(a)], provide no federal cause of action for insureds who have been wrongfully denied benefits and specifically provide federal jurisdiction only for challenges to the legality of actions by OPM [[5 C.F.R. 890.107], and mandate that affirmation by OPM of a carrier's denial of benefits is not a challenge to the legality of actions by OPM and must be brought against the insurance carrier. Id

TABLE OF AUTHORITIES

Cases

Howard v. Group Hosp. Serv., 739 F.2d 1508, 1511 (10th Cir. 1984)

Rocky Mountain Hospital and Medical Service d/b/a Blue Cross Blue Shield of Colorado v. Philips, 63 U.S.L.W. 3513 (U.S. Jan. 6, 1995) (No. 94-555)

Statutes

28.U.S.C.§1441

5 C.F.R. §890.105(a)

5C.F.R§890.107

Federal Employee Health Benefits Act ("FEHBA") 5 U.S.C. §§ 8901 et seq.

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Respondents, Marilyn Goepel and Ronald Goepel, respectfully request that this Court postpone decision on the petition for writ of certiorari which seeks review of the Third Circuit's opinion below, pending resolution by this Court of the pending writ in *Rocky Mountain Hospital and Medical Service d/b/a/ Blue Cross Blue Shield of Colorado v. Phillips*, 63 U.S.L.W. 3513 (U.S. Jan, 6, 1995) (No. 94-555).

PENDING RELATED ACTION

On January 6, 1995, this Court has granted a petition for writ of certiorari in *Rocky Mountain Hospital and Medical Service d/b/a/ Blue Cross Blue Shield of Colorado v. Phillips*, 63 U.S.L.W. 3513 (U.S. Jan, 6, 1995) (No. 94-555), in which the Tenth Circuit reached the same conclusion as the Third Circuit in *Goepel* and the prior Tenth Circuit decision in *Howard v. Group Hospital Service*, 739 F2.d at 1513 (10th Cir. 1984), i.e. that the appearance of an arguable federal question by way of a defense to a simple state law contract claim provides no basis for the exercise of federal question removal jurisdiction. *Phillips* is scheduled for oral argument on April 17, 1995. The undersigned, counsel of record for both Mrs. Phillips and Mr. and Ms. Goepel, have consented to the request of Mail Handlers to file an Amicus brief. Thus, the Court will have the benefit of the arguments of Mail Handlers in determining *Phillips*.. Since this Court's decision in *Phillips* will likely impact significantly or render moot upon any decision the Court might make in *Goepel*, we respectfully request that decision on the certiorari petition be held pending resolution of *Phillips*.

Respectfully submitted,

Arlene Gilbert Groch

ARLENE GILBERT GROCH

Dated: February 24, 1995